

# Committee on Resources

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**PRESIDENT**  
**ROSEBUD SIOUX TRIBE OF SOUTH DAKOTA**  
**Testimony Before the Committee on Resources**  
**United States House of Representatives**

Hearing on S. 1721, "A Bill To Amend The Indian Land Consolidation Act To Improve Provisions Relating To Probate Of Trust And Restricted Land, And For Other Purposes."

June 23, 2004

Good morning, Committee and Chairman Pombo. My name is Charlie Colombe and I am President of the Rosebud Sioux Tribe of South Dakota. At Rosebud, we are descended from the Sicangu or Burnt Thigh Band of the Tetonwan or Prairie Dwelling Lakota. It is a privilege and an honor to give testimony before the Committee on S. 1721, "A bill to amend the Indian Land Consolidation Act."

As a preliminary matter, I would respectfully ask the Committee to seek amendment of Section 7 of S. 1770 which authorizes appropriations. Federal funding for any IIM or Trust claims paid in connection with any historical accounting or internal restructuring required by trust reform under the Cobell suit or tribal claims should be paid from the United States' permanent judgment appropriation under 31 U.S.C. § 1304 and should not be paid or reimbursed from appropriations for the Department of the Interior/Bureau of Indian Affairs. The Permanent Judgment Fund should pay for the historic accounting, not current BIA appropriations because it is not right for the victims of this terrible mismanagement to be asked to forego services to pay for the accounting which should have been due tribes and their members since 1887. If the Cobell claims and the historic accounting are not paid from the said Permanent Judgment Fund it is unlikely that the accounting will be effected and that those historic claims will ever be paid.

I have attached an exhibit to my testimony which analyzes how Rosebud Sioux Tribal members who have not received the benefits that they ought to have received from the Tribal Land Enterprise (hereafter "TLE") since it was founded under Federal law in 1943. I offer this to the Committee because the Rosebud Sioux Tribe intends to bring this claim to the Committee in the near future and we will do our own accounting to demonstrate to this Committee and to the United States the breakdown in the United States' trust obligations to RST members.

In the decades that I have spent working on tribal land issues, I have identified many issues that this bill remedies:

- Indians usually do not make wills;
- Indians dying intestate leads to the application of state law when the BIA probates the intestate estates because tribes lack the authority to probate trust property;
- Most Indian Reorganization Act Era tribal constitutions prohibit Tribes from probating trust assets; and
- The Rosebud Constitution prevents the RST Courts from probating trust property.

S. 1721 would allow far greater latitude for tribal court jurisdiction by authorizing tribes to probate trust assets. Overall this legislation is the best opportunity that tribes have had, in my lengthy experience, to fix the fractionalization of trust lands. In addition, it prevents trust lands from passing out of trust ownership by allowing descendants of allottees to inherit trust land without subjecting the lands to taxation and state jurisdiction.

Tribes throughout the United States have closely reviewed this legislation in behalf of their members. Virtually all tribes favor the enactment of S. 1721 because it offers tribes and their members the chance to consolidate their land holdings while maintaining tribal jurisdiction and tribal ownership of their lands. This is

a truly significant aspect of the legislation given the harsh treatment of tribal jurisdiction and sovereignty by the Federal courts in recent years.

Amending the Indian Land Consolidation Act to revise the requirements for testamentary and non-testamentary disposition of interests in trust, restricted lands, and personal property of an Indian will end the unfair application of state law to Indian property. In addition, tribes may now adopt their own probate codes to ensure that their members will inherit trust property in a timely, culturally appropriate manner.

S. 1721 repeals the limitation of any bequest of an interest in trust, restricted land, or personal property to a decedent's Indian spouse. The legislation retains permission for an Indian decedent to will such interests to the tribe with jurisdiction over the land. Importantly, the Bill adds permission for allottees to bequeath such interests to the lineal descendants of the Indian making the will or to any person who owns a pre-existing undivided trust or restricted interest in the same parcel of land in trust or restricted status. These aspects of the bill will slow the migration of trust lands to fee status by making it easier for the allottees and holders of beneficial interests in trust lands to bequeath their trust property to their descendants and relatives who share undivided fractionated interests in the same tracts of trust land.

S. 1721 regards a bequest of trust property as the bequest of the interest in trust or restricted status, unless the language of the will clearly shows that the person making the will planned to bequeath the trust property as a fee interest without restrictions or the interest bequeathed is a life estate. This Bill limits the order of the bequest of an interest in trust or restricted land as a life estate or in fee for an interest not bequeathed according to the general rule. Further, S. 1721 allows the owner of interests in trust or restricted personal property to bequeath such interests to any person or entity. Thus, it will be the will of the owner of the property interest that decides the disposition of the property, not state law or an administrative formula.

When this legislation is enacted, where the maker of a will bequeaths interests in the same parcel of trust or restricted lands to more than one person, in the absence of express language in the will to the contrary, the bequest will be presumed to create joint tenancy with the right of survivorship in the property interests involved. The Bill allows for the partition and purchase of highly fractionated Indian land by eligible Indian tribes. This furthers the ability of tribes to consolidate their land holdings, the ultimate purpose of the Indian Land Consolidation Act (hereafter "ILCA"). The Bill also sets forth a mechanism allowing co-owners of trust or restricted interests in a parcel of land to let surface leases of such a parcel without requiring the Secretary of the Interior's (hereafter "Secretary") approval of the lease.

S. 1721 declares that, after enactment, it may not be construed to limit or otherwise affect the application of any Federal law requiring the Secretary to approve mineral leases or other agreements for the development of the mineral interest in trust or restricted land. The Bill allows interests in a parcel of trust or restricted land in the decedent's estate, under specified conditions, to be purchased at probate consistent with the Bill. S. 1721 proscribes secretarial approval of a tribal probate code that prevents the bequest of an interest in trust or restricted land by an Indian lineal descendant of the original allottee, or an Indian who is not a member of the tribe with jurisdiction over the interest, unless it provides for the renouncing of interests, the reservation of life estates, and payment of fair market value.

The Act provides that authority otherwise available to a tribe to acquire an interest in trust or restricted land bequeathed by the owner to a non-Indian will not apply where the interest is part of a family farm bequeathed to a member of the decedent's family, and the inheritor agrees that the Indian tribe will have the opportunity to acquire the interest for fair market value if it is offered for sale to a person or entity that is not a family member of the landowner.

S. 1721 will make the fractional interest acquisition program a permanent program. This means that tribes can preserve their reservations and their authority over them – to the extent that trust lands exist in their respective reservations. The Act Sets forth procedures for the sale of trust interests to Indian landowners. This is an important clarification; now Indians will have notice of exactly how to acquire interests in trust and restricted property. ILCA mandates that the Secretary place a lien on all revenue accruing to an fractional interest in trust land acquired under ILCA until the Secretary receives payment in full to the Acquisition Fund of the purchase price of that interest. This allows the Secretary to assist tribes in the consolidation of fractionalized undivided interests in trust lands by -- in essence -- providing the tribes interest free loans because the BIA prepays the purchase price and over time the lease for the tract repays the BIA/Secretary and the lien is lifted.

The Act allows the rules of intestate succession under the Indian Land Consolidation Act or under a tribal

probate code approved under the Act or under regulations made pursuant to the said tribal probate code to apply to fee patented lands. This is a major change because previously tribes didn't have the authority to probate fee lands!

It is helpful to tribes that S. 1721 instructs the Secretary to award grants to nonprofit entities who provide legal assistance services to tribes, individual owners of interests in trust or restricted lands, or Indian organizations under the Federal poverty guidelines. Up to now, unless the Interior Solicitor requested that the Justice Department represent tribes or the tribes paid the attorneys then there was no legal assistance available to further tribal interests in enhancing the tribal land base through purchase from individual tribal members.

Under the Bill, the Secretary is required to notify each Indian landowner of specific information concerning each tract of trust or restricted land the landowner has an interest in. In the past, individual landowners were frequently denied access to this important information. This is a dramatic change from existing law and policy. Nowhere in the BIA has there ever been assistance in planning or creating private and/or family trusts concerning interests in trust or restricted lands. Now, the Secretary is mandated to provide individuals with such assistance!

S. 1721 provides that as a matter of law, that after 6 years an undivided interest in a tract of trust or restricted land of a tribal member is abandoned and subject to this Act. This is important because currently heirs are required to obtain a judicial decree that a relative is deceased before the BIA can take action concerning the land. Of course, the Secretary must provide written notice to all of the heirs before holding a hearing to legally decide who the heirs to the trust property are. In addition, the Secretary must send notice annual with a response form as well as a change of name/address form to the putative owners of interests in trust or restricted land. This protects allottees by notifying them of any changes in their trust property interests the same year that the interests have changed.

For the foregoing reasons, on behalf of the Rosebud Sioux Tribe and its members I ask that you support the enactment of S.1721. Thank you for your consideration.